



## DEPARTMENT OF AGRICULTURE

### Rural Business Cooperative Service

### Rural Utilities Service

### 7 CFR Part 4287

[Docket No. RBS-22-BUSINESS-0018]

RIN 0570-AB08

### Updates to Servicing Requirements for Business & Industry Guaranteed Loans

**AGENCY:** Rural Business Cooperative Service and Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is revising their servicing requirements for the Business & Industry (B&I) Guaranteed Program to clarify the current regulation and update certain provisions to align with the OneRD Guarantee Loan Initiative.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Additional information about RD and its programs is available on the Internet at <https://www.rd.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Justin Kirking, Servicing Branch Chief, Rural Business-Cooperative Service, USDA Rural Development, 1400 Independence Ave., SW, Rm 5803-Stop 3201, Washington, DC 2050-3201; telephone 608-606-0298; email [justin.kirking@usda.gov](mailto:justin.kirking@usda.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities.

This is achieved by bolstering the existing private credit structure through the guarantee of quality loans.

The regulations in 7 CFR part 4287, subpart B, Servicing Business and Industry Guaranteed Loan Program, provide servicing and liquidation requirements for Business & Industry (B&I) Guaranteed Loans originated under 7 CFR part 4279, subparts A and B. Subparts A and B of 7 CFR part 4279 and subpart B of 7 CFR part 4287 are applicable to B&I Loans guaranteed by the Agency prior to October 1, 2020, and to B&I loans made under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID-19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Beginning on October 1, 2020, new B&I loans are made under 7 CFR part 5001, Guaranteed Loans, which is commonly referred to as the OneRD Guarantee Loan Initiative.

The RBCS is amending 7 CFR part 4287, subpart B, with the intent to clarify the current regulation and update certain provisions to align with 7 CFR part 5001. It is anticipated that most existing lenders with guaranteed loans serviced under 7 CFR part 4287, subpart B, will obtain new guarantees under 7 CFR part 5001 which will be serviced in accordance with subpart F of 7 CFR part 5001. The Agency has identified several provisions that should be aligned between the two servicing regulations (7 CFR part 5001 and 7 CFR part 4287, subpart B) in order to provide consistency, efficiency, and to improve the customer experience.

## **II. Summary of Changes to the Rule**

### **Section 4287.107 Routine Servicing**

Paragraph (d) is updated to clarify financial reporting requirements for the Borrower(s).

### **Section 4287.112 Interest Rate Changes**

Paragraph (b) is revised to provide flexibility regarding changing from a variable rate to a fixed rate and to help align with 7 CFR part 5001.

### **Section 4287.113 Release of Collateral**

Paragraphs (a) and (c) are revised to establish uniform procedure for the release of collateral and to bring the regulation more in alignment with 7 CFR part 5001.

### **III. Executive Orders/Acts**

#### Executive Order 12866 – Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### Assistance Listing Number (formally known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the Business and Industry Guaranteed Loan Program is 10.768. The Assistance Listings are available on the Internet at <https://sam.gov/>.

#### Executive Order 12372 – Intergovernmental Review

This final rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials.

#### Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570-0069 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). RBCS has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a

significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

#### Executive Order 12988 – Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the

rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

#### Executive Order 13132 – Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RBCS in the development of regulatory policies that have tribal implications or preempt tribal laws. RBCS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RBCS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: [AIAN@usda.gov](mailto:AIAN@usda.gov) to request such a consultation.

#### E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### Civil Rights Impact Analysis

Rural Development, a mission area for which RBCS is an agency, has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been

determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule is not likely to negatively impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

#### USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights

(ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

### **List of Subjects for 7 CFR Part 4287**

Economic development, Energy, Energy conservation, Grant programs, Loan programs, Loan programs-business, Loan programs-housing and community development, Renewable energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, 7 CFR part 4287 is amended as follows:

### **PART 4287 – SERVICING**

1. The authority citation for part 4287 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

### **Subpart B – Servicing Business and Industry Guaranteed Loans**

2. Amend § 4287.107 by revising paragraph (d) to read as follows:

#### **§ 4287.107 Routine servicing.**

\* \* \* \* \*

(d) *Borrower financial reports.* The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F. When the

borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency will provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee.

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3. Amend § 4287.112 by revising paragraph (b) to read as follows:

**§ 4287.112 Interest rate changes.**

\* \* \* \* \*

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred or to change from a variable rate to a fixed rate. Variable rates can be changed to a fixed rate at the request of the borrower, lender, agreement of the holder, if any, and with the Agency's prior written concurrence. After the rate change, the rate must meet the requirements of 7 CFR 4279.125.

\* \* \* \* \*

4. Amend § 4287.113 by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

**§ 4287.113 Release of collateral.**



(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) without Agency concurrence if the proceeds generated are used to pay down debt in order of lien priority, reduce the guaranteed loan or to acquire replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan is not in monetary default or liquidation.

\* \* \* \* \*

(c) Collateral must remain sufficient to provide for adequate collateral coverage for the outstanding guaranteed loan(s). For a release of collateral request when the Borrower is not in monetary default or liquidation, the lender must support all releases of chattel collateral with a value exceeding \$250,000 and real estate collateral with a value exceeding \$500,000 with a current appraisal on the collateral being released and otherwise meets the requirements of § 4279.144 of this chapter. All other release of collateral requests must meet the appraisal requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

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**Karama Neal,**

*Administrator,*

*Rural Business Cooperative Service.*

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**Chrisopher A. McLean,**

*Acting Administrator,*

*Rural Utilities Service.*

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